



**Billing Code: 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**[Docket No. 160303183-6183-01]**

**RIN 0648-BF58**

**Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Tribal Usual and Accustomed Fishing Areas**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the decision in *United States v. Washington*, 2:09-sp-00001-RSM, (W.D. Wash. Sept. 3, 2015) (Amended Order Regarding Boundaries of Quinault & Quileute U&As), which set forth certain boundaries of the usual and accustomed (U&A) fishing areas in the Pacific Ocean of the Quileute Nation (Quileute) and Quinault Indian Nation (Quinault). This action also includes related changes to NMFS regulations to provide consistency for tribal U&A fishing area boundaries across all fisheries managed by NMFS under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act).

**DATES:** This final rule is effective [*insert date of publication in the Federal Register*].

**ADDRESSES:** Information relevant to this final rule are available from William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070. Electronic copies of this final rule are also available at the NMFS West Coast Region Web site: <http://www.westcoast.fisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Hanshew, phone: 206-526-6147, fax: 206-526-6736, or e-mail: [gretchen.hanshew@noaa.gov](mailto:gretchen.hanshew@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This rule is accessible via the Internet at the Office of the Federal Register Web site at <https://www.federalregister.gov>. Background information and documents are available at the NMFS West Coast Region Web site at <http://www.westcoast.fisheries.noaa.gov>.

**Background**

The Magnuson Act requires that any fishery management plan approved by the Secretary of Commerce and any implementing regulations be consistent with all provisions of the Act and “any other applicable law.” 16 U.S.C. 1854(b)(1). “Other applicable law” includes treaties with northwest Indian tribes reserving “the right of taking fish, at all usual and accustomed grounds and stations.” *Washington State Charterboat Association v. Baldrige*, 702 F.2d 820, 823 (9th Cir. 1983). For many years, NMFS has recognized that it must accommodate these treaty fishing rights regardless of whether the details of those rights have been judicially determined. In 1986, NMFS’s regulations first described “treaty fishing areas” of the Pacific Coast treaty Indian tribes. 51 FR 16471 (May 2, 1986). For purposes of this rule, Pacific Coast treaty Indian tribes means the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation. The boundary descriptions of treaty fishing areas first applied only to the Pacific halibut fishery, but in 1987 the same descriptions were adopted for the Pacific salmon fishery. 52 FR 17264 (May 6, 1987). NMFS has consistently stated that these boundaries were not intended to represent a formal determination of the boundaries of treaty fishing areas, and that they are subject to change as necessary to comport with future court orders.

In 1996, NMFS issued a final rule amending its regulations managing West Coast groundfish fisheries and describing the physical boundaries of Pacific Coast treaty Indian tribes' usual and accustomed (U&A) fishing areas. This rule described the same areas that had previously been set forth in NMFS regulations. In promulgating the rule, NMFS explained that:

Under this rule, NMFS recognizes the same U&A areas that have been implemented in Federal salmon and halibut regulations for a number of years. The States and the Quileute tribe point out that the western boundary has only been adjudicated for the Makah tribe. NMFS agrees. NMFS, however, in establishing ocean management areas, has taken the adjudicated western boundary for the Makah tribe, and extended it south as the western boundary for the other three ocean tribes. NMFS believes this is a reasonable accommodation of the tribal fishing rights, absent more specific guidance from a court. NMFS regulations, including this regulation, contain the notation that the boundaries of the U&A may be revised by order of the court.

61 FR 28786, 28789 (June 6, 1996)

Subsequently, NMFS promulgated regulations to describe the same U&A fishing area boundaries in its regulations for coastal pelagic species and highly migratory species. 66 FR 44986 (August 27, 2001) (coastal pelagic species); 68 FR 68834 (December 10, 2003) (highly migratory species). The same boundaries are also codified in the regulations governing Pacific halibut fisheries. 50 CFR 300.64. Regulations governing Pacific salmon fisheries are not codified, but also use the same boundaries when issued on a yearly basis. *See, e.g.*, 81 FR 26157 (May 2, 2016).

*Newly adjudicated boundaries of Pacific Coast treaty tribes' U&A fishing areas*

On August 27, 2015, the United States District Court for the Western District of Washington set forth the boundaries of the U&A fishing areas for the Quileute and the Quinault. *United States v. Washington*, 2:09-sp-00001-RSM, (W.D. Wash. Aug. 27, 2015) (Order Regarding Boundaries of Quinault & Quileute U&As). That order was amended on September 3, 2015. *United States v. Washington*, 2:09-sp-00001-RSM, (W.D. Wash. Sept. 3, 2015) (Amended

Order Regarding Boundaries of Quinault & Quileute U&As). This rulemaking implements the September 3 Amended Order. These newly adjudicated boundaries differed in some respects from the boundaries that NMFS adopted in the 1996 regulations. Specifically, the adjudicated northern boundary of the Quileute's U&A fishing area and the western boundary of the Quinault's U&A fishing area differ from the 1996 regulations. Accordingly, NMFS now revises the latitude and longitude coordinates describing the tribes' U&A fishing areas, consistent with the September 3, 2015, court order. Other boundaries, and their supporting rationale as described in the June 6, 1996, rule (61 FR 28789) are not affected by this rulemaking.

#### *Technical Revisions*

The Pacific Coast treaty Indian tribal U&A fishing areas are referenced in several places within title 50, part 660. To reduce duplicative regulations and ensure consistency within title 50, part 660, regulations describing the Pacific Coast treaty Indian tribes' U&A fishing areas are consolidated and moved to § 660.4, subpart A. Cross-references to Pacific coast treaty tribes' U&A fishing areas throughout title 50, part 660 are updated. Minor changes to regulations are made to consistently refer to "U&A fishing areas" rather than "U&As."

Minor changes are also made to consistently refer to the tribes' U&A fishing areas "within the EEZ." Regulations at § 660.50(c) previously described tribal U&A fishing areas as "within the fishery management area." "Fishery management area" is defined slightly differently in the various parts and subparts within title 50, part 660, and include additional details that do not apply for the purpose of describing U&A fishing areas. The term "fishery management area" as it relates to Pacific Coast treaty Indian tribes' U&A fishing areas is therefore replaced with the term EEZ, which is defined at § 600.10.

All of the minor regulatory changes described in “Technical Revisions” are non-substantive, and intended to reduce duplicative regulations and bring consistency among the parts and subparts in title 50, part 660, regarding Pacific coast treaty Indian tribes’ U&A fishing areas.

### **Classification**

The Administrator, West Coast Region, NMFS, determined that the minor regulatory amendments associated with the Court-ordered changes to tribal U&A fishing areas, which this final rule implements, are necessary for conservation and management and are consistent with the Magnuson Act and other applicable laws.

NMFS finds good cause to waive prior public notice and comment on the revisions to regulations in this final rule under 5 U.S.C. 553(b)(3)(B) because notice and comment would be impracticable and contrary to the public interest. Affording the time necessary for notice and comment rulemaking for these changes to regulations is impracticable and contrary to the public interest because the district court has issued its final judgment and the boundaries adjudicated by the court are controlling. NMFS’s regulations must be modified consistent with the court order as quickly as possible to bring them into compliance with the legal requirements. It is further necessary to act quickly to modify the tribal U&A fishing area boundaries and to make related, minor technical corrections in title 50, part 660, to prevent the confusion that arises out of conflicting boundaries, which adds complexity to the management regime and creates problems for state and Federal management and enforcement. Furthermore, NMFS is not exercising any discretion in issuing this rule, but only making the changes necessary to comply with the court order. For the same reasons, NMFS also finds good cause to waive the 30-day delay in effectiveness.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The regulations at § 660.50(d) state treaty rights “will be implemented by the Secretary” and regulations will be developed in consultation with the affected tribe(s). The minor regulatory amendments associated with the Court-ordered changes to tribal U&A fishing areas in this final rule have been developed following these procedures.

**List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, and Indian Fisheries.

Dated: June 2, 2016.

---

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

**PART 660—FISHERIES OFF WEST COAST STATES**

1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

2. A new § 660.4 is added to subpart A to read as follows:

**§ 660.4 Usual and accustomed fishing areas for Pacific Coast treaty Indian tribes.**

(a) The Pacific Coast treaty Indian tribes' usual and accustomed (U&A) fishing areas within the EEZ are set out below in paragraphs (a)(1) through (a)(4) of this section. Boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

(1) Makah. The area north of 48°02.25' N. lat. (Norwegian Memorial) and east of 125°44' W. long.

(2) Quileute. The area between 48°10.00' N. lat. (Cape Alava) and 47°31.70' N. lat. (Queets River) and east of 125°44.00' W. long.

(3) Hoh. The area between 47°54.30' N. lat. (Quillayute River) and 47°21.00' N. lat. (Quinault River) and east of 125°44.00' W. long.

(4) Quinault. The area between 47°40.10' N. lat. (Destruction Island) and 46°53.30' N. lat. (Point Chehalis) and east of 125°08.50' W. long.

(b) [Reserved]

3. In § 660.11, add a new definition for “Usual and accustomed fishing areas” in alphabetical order to read as follows:

**§ 660.11 General definitions.**

\* \* \* \* \*

*Usual and accustomed fishing areas* or *U&A fishing areas* for Pacific Coast treaty Indian tribes, occurring within the EEZ, are described at § 660.4, subpart A.

\* \* \* \* \*

4. In § 660.12, revise paragraph (a)(14) to read as follows:

**§660.12 General groundfish prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(14) During times or in areas where at-sea processing is prohibited, take and retain or receive Pacific whiting, except as cargo or fish waste, on a vessel in the fishery management area that already has processed Pacific whiting on board. An exception to this prohibition is provided if the fish are received within the tribal U&A fishing area, described at §660.4, subpart A, from a member of a Pacific Coast treaty Indian tribe fishing under § 660.50, subpart C.

\* \* \* \* \*

5. In § 660.50, revise paragraphs (b), (c), (e)(4), and (g)(11) to read as follows:

**§ 660.50 Pacific Coast treaty Indian fisheries.**

\* \* \* \* \*

(b) *Pacific Coast treaty Indian tribes.* For the purposes of this part, Pacific Coast treaty Indian tribes means the Hoh Indian Tribe, Makah Indian Tribe, Quileute Indian Tribe and the Quinault Indian Nation.

(c) *Usual and accustomed fishing areas or U&A fishing areas.* The Pacific Coast treaty Indian tribes' U&A fishing areas within the EEZ are set out in § 660.4.

\* \* \* \* \*

(e) \* \* \*

(4) *Fishing outside the U&A fishing area or without a groundfish allocation.* Fishing by a member of a Pacific Coast treaty Indian tribe outside the applicable Indian tribe's U&A fishing area, or for a species of groundfish not covered by an allocation, set-aside, or regulation under this section, is subject to the regulations in the other sections of subpart C through subpart G of this part. Treaty fisheries operating within tribal allocations are prohibited from operating outside the U&A fishing areas described at § 660.4, subpart A.

\* \* \* \* \*



(g) \* \* \*

(11) *EFH*. Measures implemented to minimize adverse impacts to groundfish EFH, as described in § 660.12 of this subpart, do not apply to tribal fisheries in their U&A fishing areas described at § 660.4, subpart A.

6. In 660.112, revise paragraph (c)(2) to read as follows:

**§660.112 Trawl fishery—prohibitions.**

\* \* \* \* \*

(c) \* \* \*

(2) During times or in areas where at-sea processing is prohibited, take and retain or receive Pacific whiting, except as cargo or fish waste, on a vessel in the fishery management area that already has processed Pacific whiting on board. An exception to this prohibition is provided if the fish are received within the tribal U&A fishing area, described at § 660.4, subpart A, from a member of a Pacific Coast treaty Indian tribe fishing under § 660.50, subpart C.

\* \* \* \* \*

7. In § 660.518, revise paragraphs (a) and (b) to read as follows:

**§ 660.518 Pacific Coast Treaty Indian Rights.**

(a) Pacific Coast treaty Indian tribes have treaty rights to harvest CPS in their usual and accustomed fishing areas in the EEZ.

(b) For the purposes of this section, Pacific Coast treaty Indian tribes means the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation, and their “usual and accustomed fishing areas” are described at § 660.4, subpart A.

\* \* \* \* \*

8. In § 660.706, revise paragraphs (a), (c), (d), (f) and (h) to read as follows:

**§660.706 Pacific Coast Treaty Indian rights.**

(a) Pacific Coast treaty Indian tribes have treaty rights to harvest HMS in their usual and accustomed (U&A) fishing areas in the EEZ.

\* \* \* \* \*

(c) The Pacific Coast treaty Indian tribes' U&A fishing areas within the EEZ are set forth in § 660.4 of this chapter.

(d) *Procedures.* The rights referred to in paragraph (a) of this section will be implemented by the Secretary of Commerce, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will be implemented either through an allocation of fish that will be managed by the tribes, or through regulations that will apply specifically to the tribal fisheries. An allocation or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the NMFS West Coast Regional Administrator, at least 120 days prior to the time the allocation is desired to be effective, and will be subject to public review through the Council process. The Secretary of Commerce recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary of Commerce will develop tribal allocations and regulations in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

\* \* \* \* \*

(f) Fishing (on a tribal allocation or under a Federal regulation applicable to tribal fisheries) by a member of a Pacific Coast treaty Indian tribe within that tribe's U&A fishing area is not subject to provisions of the HMS regulations applicable to non-treaty fisheries.

\* \* \* \* \*

(h) Fishing by a member of a Pacific Coast treaty Indian tribe outside that tribe's U&A fishing area, or for a species of HMS not covered by a treaty allocation or applicable Federal regulation, is subject to the HMS regulations applicable to non-treaty fisheries.

[FR Doc. 2016-13469 Filed: 6/7/2016 8:45 am; Publication Date: 6/8/2016]